STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2004-606

September 21, 2004

PUBLIC UTILITIES COMMISSION
Amendments to Incorporate Renewable Resources into Standard Offer Supply (Chapter 301)

NOTICE OF RULEMAKING

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

Through this Notice, we initiate a rulemaking to establish standards and procedures for incorporating new renewable resources into the supply for standard offer service.

II. BACKGROUND

During its last session, the Legislature enacted an Act To Promote Economic Development in the State by Encouraging the Production of Electricity from Renewable and Indigenous Resources. P.L. 2003, ch. 665 (Act). Section 2 of the Act (codified at 35-A M.R.S.A. § 3212(4-A)) requires the Commission to adopt rules establishing standards and procedures for incorporating renewable resources constructed after March 1, 2004 into the standard offer supply mix. The Act specifies that the rules must provide for the incorporation of new renewable resources into standard offer supply if the Commission makes findings that such action will reduce price volatility, offer an effective hedging strategy, and provide a competitively price supply option. The Act states that the rules will be major substantive rules, as defined in Title 5, chapter 375, subchapter 2-A, and that they must be submitted to the Legislature for review by March 1, 2005.[1]

Chapter 301 of the Commission's rules contains the terms and conditions of standard offer service and the bidding and solicitation procedures used to select standard offer providers. We propose to add a new section (section 9) to Chapter 301 entitled "Renewables; Hedging" as the mechanism to comply with the Act's requirements.[2]

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[1] The Act may be found on the State's web site at: http://janus.state.me.us/legis/ros/lom/LOM121st/15Pub651-700/TableofContents.htm

[2] Chapter 301 may be found on the Commission's web site at: http://www.state.me.us/mpuc/rules/part3.htm

III. DISCUSSION OF PROPOSED RULE PROVISIONS

A. New Renewable Resources (Section 9(A))

This provision of the proposed rule states that the Commission shall incorporate new renewable resources into standard offer supply if the Commission makes the statutorily required findings. As required by the Act, the proposed rule defines "new renewables" as renewable resources listed in the Restructuring Act (35-A M.R.S.A. § 3210(2)(C) as qualifying for the State's portfolio requirement that are constructed after March 1, 2004. The proposed rule specifies that resources constructed after March 1, 2004 are resources with an in-service date after March 1, 2004, new capacity added to an existing facility after March 1, 2004, and capacity that has been idle for at least two years but has resumed operation after March 1, 2004. We invite comment on whether these categories appropriately and completely define "new capacity" for the purpose of complying with the Act. In addition, we encourage comments on the proper treatment of facilities or portions of facilities that are refurbished for economic or environmental reasons.

The subsection also states that the provision only applies to supply for the residential and small commercial standard offer class. We have restricted the proposed rule in this manner because our approach to standard offer service for the medium and large classes is to establish standard offer prices that closely follow market prices. We accomplish this goal by conducting a supply solicitation for the full amount of the load every six months. A result of establishing standard offer prices for the medium and large classes in this manner is that standard offer prices have a volatility similar to that of the regional market. This result is intended in that we have determined that standard offer service for the medium and large classes should be a true default service, because customers can obtain price stability by purchasing service from competitive suppliers. Thus, any attempt to incorporate new renewable resources into the standard offer supply for the medium and large classes as a hedge against price volatility could be considered contrary to our standard offer approach for those classes.[3] Nevertheless, we seek comment on whether the goals of the Act would be advanced if bidders for the medium and large classes were asked to indicate what, if any, percentage of their supply will come from new renewable resources. The Commission could provide that in the event of a tie for the lowest bid, the bid with the highest percentage of new

[3] The following Commission documents contain a discussion of our approach to standard offer service for the medium and large classes: *Report on Standard Offer Issues,* Docket No. 2003-127 (May 28, 2003); *Standard Offer Study and Recommendations Regarding Service after March 1, 2005* (Dec. 1, 2002).

renewable resources would be selected or the Commission could select a slightly higher priced bid that contained a certain percentage of new renewable resources.[4]

B. Standards (Section 9(B))

This subsection of the proposed rule contains the statutorily required findings that the Commission must make to incorporate new renewable standards into the standard offer supply. Specifically, the proposed rule states the Commission will incorporate new renewable resources only if it finds that such action will reduce the risk of price volatility, offer an effective hedging strategy and provide a competitively priced supply option. We invite comment on factors that would differentiate between "offering an effective hedging strategy" and "reducing the risk of price volatility." We also invite comment on the Commission's assumption that "competitively priced" means that the standard offer price cannot be higher as a result of incorporating new renewable resources into the supply. If the Commission can obtain supply on the same terms without specifying a new renewable component, would there be any reason to accept a bid that contains a new renewable component at a higher price?

The proposed rule does not include criteria or guidelines that the Commission would use to make the statutory findings. Our experience with standard offer bid solicitations is that bidders often submit proposals or present conditions that were not anticipated. Thus, our initial view is that the Commission should be allowed flexibility to consider all factors that may become relevant upon the examination of bids.

C. Procedures (Section 9(C))

The proposed rule requires the Commission to solicit supply from new renewable resources every time it conducts a solicitation for standard offer supply. The term lengths and bid requirements for the new renewable resources would be the same as the traditional solicitation for standard offer supply. This would allow the Commission to make reasonable comparisons among bids to determine if the statutorily required findings can be made.

Our traditional bid solicitations are for relatively short term lengths (generally one to three years). The use of renewable resources as a hedge against price volatility may be most effective through longer-term arrangements. For this reason, the proposed rule requires the Commission to periodically solicit bids for longer terms than the usual standard offer solicitation. Section 9(C)(2) of the proposed rule specifies that these solicitations will be for a minimum of six years (unless the Commission determines that a different term would be appropriate). As with the shorter-term bids, we would also seek proposals that are not restricted to new renewables so that we have a means of comparison to determine if the findings

[4] The Commission's ability to select a higher priced bid would depend on the interpretation of a "competitively priced supply option," as this terminology is used in the Act. This issue is discussed below.

required by statute can be made. We are likely to conduct this longer term solicitation as part of the traditional shorter-term standard offer bid process. As a consequence, we may be in the position of comparing shorter-term bids to longer-term bids. We seek comment on approaches to evaluating bids of varying terms.

The proposed rule contemplates that all new renewable supply proposals will be for all requirements associated with a specified portion of standard offer load, as is the case for traditional standard offer solicitations. The all requirements approach (as opposed to specifying an amount of energy and capacity) has several advantages. The approach avoids any possibility of creating new stranded costs and thus any need to allocate such costs to particular customer classes. The approach also allows for an "apples-to-apples" comparison with non-renewable proposals. Such a comparison would appear to be required for the Commission to make the findings required by the Act. However, we ask for comments on how we could evaluate a new renewable proposal for a fixed amount of energy and capacity so as to determine whether the competitively priced supply option finding can be made. More generally, we ask for comment on the existence of other bid solicitation approaches that would be both workable and reasonably likely to satisfy the purposes of the Act.

The proposed rule specifies that suppliers in the ISO-NE control area must use NEPOOL's Generation Information System (GIS) to verify that the supply is actually from new renewables. This will make it easier for suppliers to provide an all new renewables supply, because the supplier would only have to obtain the attributes. Additionally, the use of the GIS system will avoid the possibility of double counting the renewable power (e.g. use of power to satisfy an other state's portfolio requirement).

Finally, section 9(C)(4) of the proposed rule has a waiver provision that states that the Commission need not solicit new renewable proposals if it finds a substantial likelihood that no reasonable proposal will be presented. This provision is intended to avoid unnecessary work if it can be determined that there is little likelihood that new renewable proposals can be made that would satisfy the requirements of the Act.

D. Contracting

The Act specifies that the Commission may enter into supply contracts or require standard offer providers to enter into supply contracts. The approach in the proposed rule, whereby we seek suppliers to provide standard offer service directly to customers using new renewable resources, eliminates the need for the Commission to enter into supply contracts or to order suppliers to enter into such contracts. Nevertheless, we seek comment on the existence of any workable approaches in which the Commission would enter into supply contracts or require standard offer providers to enter into contracts. In the case of the Commission, we note likely difficulties that result from the Commission not being a participant in the regional market and not having its own funds to pay for purchased power. In the case of standard offer providers, there are difficulties that arise from the fact that providers of standard offer tend to change

frequently over time. We ask for comments on the viability of an approach in which each standard offer provider chosen over time would be required to contract to buy the output from a particular renewable generator at pre-specified prices.

It appears that the most appropriate entity to enter into a longer-term contract with a renewable generator or supplier would be the transmission and distribution (T&D) utility. T&D utilities are market participants with funds to purchase supply that can be used for standard offer service. For example, one approach might be for the Commission to require that standard offer suppliers bid to provide supply beyond that which is provided by a renewable contract entered into between the T&D utility and a new renewable generator. We seek comments on whether the Act should be amended to authorize the Commission to require that T&D utilities enter into contracts with renewable suppliers and what are the best approaches for use of this option to satisfy the goals of the Act.

IV. RULEMAKING PROCEDURES

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. A public hearing on this matter will be held on October 19, 2004 at 1:30 p.m. at the Public Utilities Commission. Written comments on the proposed Rule may be filed with the Administrative Director until October 29, 2004. However, the Commission requests that comments be filed by October 13, 2004 to allow for follow-up inquiries during the hearing; supplemental comments may be filed after the hearing. Written comments should refer to the docket number of this proceeding, Docket No. 2004-606 and be sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed Rule is expected to be minimal. The Commission invites all interested parties to comment on the fiscal impact and all other implications of the proposed rule.

Accordingly, we

O R D E R

1. That the Administrative Director shall notify the following of this rulemaking proceeding:

a. All transmission and distribution utilities in the State;

b. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;

c. All licensed competitive electricity providers;

d. All persons known to the Commission interested in the development of new renewable resources.

2. That the Administrative Director shall send copies of this Notice of Rulemaking and attached proposed rule to:

a. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

b. Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

Dated at Augusta, Maine, this 21st day of September, 2004.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond
Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.